

UNITED STATES OF AMERICA,

Plaintiff,

v.

Thiokol Corporation,

Defendant.

CIVIL ACTION NO. 94-320 (HAA)

CV 94-320 (HAA)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CERCLA RD/RA CONSENT DECREE

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CONSENT DECREE**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) performance by Defendant of the response actions at the Rockaway Borough Well Field Superfund Site ("the Site"), pursuant to the Record of Decision ("ROD") issued on September 30, 1991 and consistent with National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (2) reimbursement of past costs incurred by EPA and the Department of Justice for response actions at the Rockaway Borough Well Field Superfund Site in Rockaway Borough, Morris County, New Jersey, together with accrued interest, and future costs to be incurred by EPA and the Department of Justice at the Site.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") by letter dated April 15, 1992, of EPA's negotiations with potentially responsible parties ("PRPs")

regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The Borough of Rockaway has also filed a complaint against defendants Klockner & Klockner, a partnership, Multi-form Metals, Inc., Masden Industries, Inc., Thiokol Corporation, Roned Realty Company, alleging that the defendants are liable to the Borough under Section 107 of CERCLA, 42 U.S.C. §9607, and the New Jersey Spill Compensation and Control Act, N.J.S.A. §58:10-23.11b.k, the New Jersey Spill Act, N.J.S.A. §58:10-23.11 et seq., the Environmental Rights Act, N.J.S.A. §2A:35A-1, and state common law claims.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Fish & Wildlife Service of the United States Department of Interior and the National Oceanic and Atmospheric Administration of the United States Department of Commerce by letter dated May 22, 1992, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the

Plaintiff arising out of the transactions or occurrences alleged in the Complaint, nor does Defendant admit any of the facts contained in the Consent Decree, nor by the execution of this Consent Decree does Defendant make any admission of any kind.

G. In December 1982, the Site was placed on EPA's National Priorities List ("NPL") of Superfund Sites, 40 C.F.R. Part 300, Appendix B, which has been promulgated pursuant to Section 105(a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B).

H. The Site includes a municipal well field serving approximately 10,000 people. In 1980, the State conducted sampling at Rockaway Borough Well Field's three water supply wells and points within the Borough's water distribution system. The studies revealed the presence of thirteen volatile organic compounds, including high concentrations of tetrachloroethylene (PCE) and trichloroethylene (TCE), as well as inorganic contaminants. These substances are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

I. The presence of VOC contamination caused the Borough of Rockaway to install a three-bed granular activated carbon (GAC) adsorption treatment system. The system began operating in July 1981, treating approximately 900,000 gallons per day (gpd) of raw water pumped from the Borough's wells.

J. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, the State commenced, in March 1985, a first operable unit Remedial

Investigation (RI)/Feasibility Study (FS) for the Site pursuant to the NCP. The first operable unit RI/FS confirmed the presence of the VOC contamination, including TCE and PCE.

K. EPA signed a ROD for a first operable unit on September 29, 1986. The selected remedy described in the ROD called for the Borough to continue to operate and maintain the existing GAC filtration system, and directed the continuation of the RI/FS in an attempt to identify positively the contaminant source(s) and delineate further the full extent of contamination.

L. In May 1988, the State formally transferred the lead on the Site to EPA to perform a supplemental RI/FS, which was completed by EPA in July 1991, pursuant to 40 C.F.R. §300.430. In July 1991, EPA released to the public the supplemental RI/FS, which stated that TCE and PCE contamination found at the Site emanated from multiple source areas within the Borough, including the Klockner & Klockner property, the Wall Street/East Main Street area, and the Roned Realty Industrial area, as described in the September 30, 1991 ROD.

M. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the supplemental RI/FS and the proposed plan for remedial action on July 18, 1991, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the supplemental RI/FS and the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the

Regional Administrator based the selection of the response action.

N. The decision by EPA on the groundwater remedial action to be implemented at the Site as a result of the supplemental RI/FS is embodied in a ROD, signed on September 30, 1991, on which the State had a reasonable opportunity to review and comment. The ROD includes a responsiveness summary which embodies EPA's responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

O. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

P. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President.

Q. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site. The Parties also recognize that the implementation of this Consent Decree will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying Complaint, Settling Defendant waives all objections and defenses that it may have relating to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter the Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing the Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder

upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

b. "Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXX (Appendices)). In the

event of conflict between this Decree and any appendix, this Decree shall control.

c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Additional Response Actions), VIII (EPA Periodic Review), X (Access) (including, but not limited to, attorneys fees and the amount of just compensation), Section XVI (Emergency Response), and Paragraph 79 of Section XXII (Covenants Not To Sue By Plaintiff). Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between March 7,

1992, as to payroll costs, and March 31, 1992, as to all other costs, and the effective date of this Consent Decree.

f. "Klockner & Klockner Plume" (hereinafter "Klockner Plume"), shall mean the Klockner Plume as referred to in EPA's Record of Decision issued on September 30, 1991, as generally depicted on the map attached as Appendix C, and which may extend in a southwesterly direction to an area bounded by and including the Rockaway Borough municipal wells, designated PW-1 and PW-5 on Appendix C, and a straight line joining PW-1 and PW-5. The Klockner Plume may be further defined by EPA during Remedial Design pursuant to Paragraph 12 of this Consent Decree. The Klockner Plume includes the shallow, intermediate and deep aquifers.

g. "Klockner Property" shall mean that parcel of land designated as Lots 1 and 6 of Block 5, and Lot 7 of Block 7, on the Tax Map of Rockaway Borough, New Jersey.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

i. "NJDEPE" shall mean the New Jersey Department of Environmental Protection and Energy and any successor departments or agencies of the State.

j. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial

Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the SOW.

k. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

l. "Parties" shall mean the United States and the Settling Defendant.

m. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs that the United States incurred and paid with regard to the Site through March 7, 1992, as to payroll costs, and March 31, 1992, as to all other costs.

n. "Performance Standards" shall mean those federal and state cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in Table 9 of the ROD.

o. "Plaintiff" shall mean the United States.

p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

q. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the second Operable Unit at the Site issued on September 30, 1991, by the Regional Administrator, EPA Region II, and all attachments thereto. This ROD is attached as Appendix A.

r. "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling

Defendant to implement the final plans and specifications submitted by the Settling Defendant pursuant to the Remedial Design Work Plan and Site Management Plan for Remedial Action approved by EPA and as set forth in the SOW.

s. "Remedial Design" shall mean those activities to be undertaken by the Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

t. "Remedial Design Work Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

u. "Rockaway Borough" or "Borough" shall mean the Borough of Rockaway, Morris County, New Jersey.

v. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

w. "Settling Defendant" shall mean Thiokol Corporation (Thiokol).

x. "Site" shall mean the Rockaway Borough Well Field Superfund Site, located in Rockaway Borough, Morris County, New Jersey, as referred to in EPA's Record of Decision. The Site encompasses 2.1 square miles of Rockaway Borough, and includes the areal extent of contamination where hazardous substances have migrated or threaten to migrate, and all suitable areas in very close proximity to the contamination necessary for implementation of the response action. The Site is bordered to the north and west

by Rockaway Township and to the east and south by Denville Township.

y. "Site Management Plan for Remedial Action" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 13.a of this Consent Decree and described more fully in Paragraph 13.b.

z. "Site Management Plan for Remedial Design" shall mean the document submitted by the Settling Defendant pursuant to Paragraphs 10.a. and 11.a. of this Consent Decree.

aa. "State" shall mean the State of New Jersey.

ab. "Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

ac. "Supervisory Professional Engineer" shall mean the principal contractor retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

ad. "United States" shall mean the United States of America.

ae. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

af. "Work" shall mean all activities the Settling Defendant is required to perform under this Consent Decree, including attainment of Performance Standards, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare and the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant and to reimburse response costs of the Plaintiff.

6. Commitments by Settling Defendant

a. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. Upon entry of this Consent Decree by the Court, Settling Defendant shall finance the operation and maintenance costs of the Borough water supply treatment system until EPA determines that the Borough treatment system is no longer necessary to remediate the Klockner Plume to Performance Standards for all contaminants, as set forth in the ROD.

c. The obligations of Settling Defendant to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. However, work performed on-site must conform with the applicable requirements and standards as if a permit were in place. Where any portion of the Work requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a

failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

In the event that Settling Defendant becomes the owner of any property included in the Site, Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office, Morris County, State of New Jersey, within thirty (30) days of Settling Defendant's recording of ownership. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

a. In the event that Settling Defendant becomes the owner of any property included in the Site, the obligations of Settling Defendant with respect to the provision of access under Section X (Access) shall be binding upon Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 30 days after the Settling Defendant becomes the owner of any property included in the Site, the Settling Defendant shall record at the Recorder's Office, Morris County, a notice of

obligation to provide access under Section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

b. In the event that Settling Defendant becomes the owner of any property included in the Site, the Settling Defendant and any Successor-in-Title shall give, at least 30 days prior to the conveyance of any such interest, written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including its obligations to provide or secure access pursuant to Section X, shall continue to be met by the Settling Defendant. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendant to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Site Management Plan for Remedial Design

a. Within 15 days of lodging of this Consent Decree, Settling Defendant shall submit to EPA a Site Management Plan for Remedial Design, as specified in the SOW. EPA will either approve the Site Management Plan for Remedial Design, or require modification of it, in accordance with the procedures set forth in Section XII (Submissions Requiring Agency Approval) of this Consent Decree.

b. All aspects of the Work to be performed by Settling Defendant pursuant to Sections VI (Performance of the Work by Settling Defendant), VII (Additional Response Actions), VIII (EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a qualified licensed professional engineer (hereinafter Supervisory Professional Engineer), as specified in the SOW. Management of all the Work to be performed pursuant to this Consent Decree shall be the responsibility of the Project Coordinator, as specified in Section XIII (Project Coordinator) and further described in the SOW. The Project Coordinator shall serve as EPA's primary contact on all matters relating to the Work. Within 15 days after the lodging of this Consent Decree, Settling Defendant shall provide written notification to EPA of the identity of the Project Coordinator and Supervisory Professional Engineer, contractors and subcontractors and their

respective responsibilities for performance of the Remedial Design Work to be performed pursuant to this Consent Decree.

11. Remedial Design.

a. Within 90 days after EPA's approval of the Site Management Plan for Remedial Design, Settling Defendant shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"), as described in the SOW. The Remedial Design Work Plan shall provide for design of the groundwater remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and predesign tasks identified in the SOW.

c. Upon approval of the Remedial Design Work Plan by EPA, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendant shall implement the Predesign Studies set forth in Section A.1.b through d of the SOW. Upon the latter of entry of this Consent Decree by the Court or approval of the Remedial Design Work Plan, Settling Defendant shall perform all remaining tasks of the Remedial Design for the Remedy of the Site. The Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for

review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA or as set forth above in this Paragraph, Settling Defendant shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. Settling Defendant shall perform the Remedial Design, as specified in the SOW, within all time frames specified in the approved Remedial Design schedule included in the approved Remedial Design Work Plan.

e. The Remedial Design shall include the preparation and submittal of the following Remedial Design Reports: a Preliminary Design Report (35% completion); an Intermediate Design Report (65% completion); a Pre-Final Design Report (95% completion); and a Final Design report (100% completion). These reports shall be submitted to EPA and the State in accordance with the SOW and the schedule set forth in the approved Remedial Design Work Plan.

f. Prior to any construction activities on Site, the Settling Defendant shall submit the name and qualifications of the Independent Quality Assurance Team ("IQAT") for approval by EPA. The IQAT shall assure that the selected remedy is constructed to meet project requirements.

12. Further Definition of the Klockner Plume

a. Settling Defendant may petition EPA to further define the Klockner Plume if information obtained during the Remedial Design indicates that the definition of the Klockner Plume as provided in the Consent Decree is no longer accurate. Settling

Defendant's petition shall include all information and analyses requested by EPA. Settling Defendant's petition shall not be deemed complete until all such information and analyses are submitted to EPA. EPA will either approve or deny Settling Defendant's petition based on a review of the information submitted.

b. EPA reserves its right to further define the Klockner Plume if information obtained during the Remedial Design indicates that the definition of the Klockner Plume as provided in the Consent Decree is no longer accurate. It is EPA's present intent not to further define the Klockner Plume to extend in a southwesterly direction beyond a straight line joining the Rockaway Borough municipal wells, PW-1 and PW-5, as those wells are depicted on Appendix C.

c. The Parties agree that the procedures set forth below in this subparagraph shall be the exclusive mechanism to resolve disputes relating to any determination by EPA to further define the Klockner Plume.

i). Any determination by EPA to further define the Klockner Plume to extend in a southwesterly direction beyond the straight line joining PW-1 and PW-5, as those wells are depicted on Appendix C, shall be subject to dispute resolution following the procedures set forth in Paragraphs 62, 63 a) and b), 64, and 66 of this Consent Decree. The Parties agree that any judicial review of EPA's determination shall be based on the administrative

record of such determination, and Settling Defendant shall have the burden of demonstrating that such determination is arbitrary and capricious or otherwise not in accordance with law.

ii). Any other determination by EPA to further define the Klockner Plume, including with respect to a petition by the Settling Defendant to further define the Klockner Plume, shall not be subject to judicial review. Disputes relating to such other determinations shall be resolved following the procedures set forth in Paragraphs 62 through 66 of this Consent Decree, except that there shall be no judicial review. Settling Defendant may seek and obtain a final decision by EPA resolving any disputes pertaining to such other determinations to further define the Klockner Plume. Notwithstanding any other provision in this Consent Decree, or any other applicable law, any final decision by EPA shall be binding on the Settling Defendant and EPA and shall not be subject to judicial review.

13. Remedial Action.

a. Within 60 days after the approval of the Final Design submittal, Settling Defendant shall submit to EPA and the State, a Site Management Plan for Remedial Action, as specified in the SOW. The Site Management Plan for Remedial Action shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved

Final Design submittal. Upon its approval by EPA, the Site Management Plan for Remedial Action shall be incorporated into and become enforceable under this Consent Decree.

b. Upon approval of the Site Management Plan for Remedial Action by EPA, Settling Defendant shall perform the Remedial Action in accordance with the Site Management Plan for Remedial Action and Final Design Report, as specified in the SOW. The Settling Defendant shall submit to EPA all plans, submittals, or other deliverables required under the approved Site Management Plan for Remedial Action and the Final Remedial Design submittal in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendant shall not commence physical on-site activities at the Site prior to approval of the Site Management Plan for Remedial Action.

c. Within 90 days of the scheduled completion of the Remedial Action, Settling Defendant shall submit to EPA and the State an Operation and Maintenance Plan, as specified in the SOW.

d. Within 20 days of the completion of the Remedial Action, Settling Defendant shall submit to EPA and the State a Notice of Completion and Final Report for the Remedial Action, as specified in the SOW.

e. Upon EPA's approval of completion of the Remedial Action, Settling Defendant shall perform Operation and Maintenance activities, as specified in the SOW.

f. Upon EPA's approval of completion of the Operation and Maintenance, Settling Defendant shall commence Post-Remediation Monitoring, as specified in the SOW.

g. The Work performed by the Settling Defendant pursuant to this Consent Decree shall include achievement of the Performance Standards.

14. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, the Site Management Plan for Remedial Design or Site Management Plan for Remedial Action constitutes a warranty or representation of any kind by Plaintiff that compliance with the Work requirements set forth in the SOW and the EPA-approved Work Plans will achieve the Performance Standards. Settling Defendant's compliance with the Work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

15. Settling Defendant shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 15.a to EPA as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. ADDITIONAL RESPONSE ACTIONS

16. In the event that EPA determines or the Settling Defendant proposes that additional response actions are necessary to meet the Performance Standards or to carry out the Work, notification of the need for such additional response actions shall be provided to the Project Coordinator for the other party.

17. Within 30 days of receipt of notice from EPA pursuant to Paragraph 16 that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Defendant shall submit for approval by EPA, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 11 and 13. Upon approval of the plan by EPA pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendant shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Any additional response actions that Settling Defendant proposes are necessary to meet the Performance Standards or to carry out the Work shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendant in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

19. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the Work. Such a dispute shall be resolved pursuant to Paragraphs 61-64 of this Consent Decree.

VIII. EPA PERIODIC REVIEW

20. Settling Defendant shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

21. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendant and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region II, or his/her delegate will determine in writing whether further response actions are appropriate.

22. If the Regional Administrator, EPA Region II, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendant shall undertake any further response actions EPA has determined are appropriate, unless its liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendant shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA. The Settling Defendant

may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, as arbitrary and capricious or otherwise not in accordance with the law, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved in Paragraphs 76, 77 or 78 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII (Covenants Not To Sue By Plaintiffs).

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

23. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80), as revised; "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for

approval, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. Settling Defendant shall also submit a copy of the QAPP to the State. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall require and use best efforts to ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Alternatively, EPA SW846 methods can be used if approved by EPA in the QAPP submitted pursuant to the SOW. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken

pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

24. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA will allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

25. Settling Defendant shall submit to EPA and the State, in a timely manner or upon request by EPA, the results of all sampling and/or tests or other non-privileged data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the implementation of this Consent Decree or obtained in the course of the implementation of this Consent Decree.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

X. ACCESS

27. Commencing upon the date of lodging of this Consent Decree, the Settling Defendant agrees to provide the United States, and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXV (Access to Information); and
- g. Assessing Settling Defendant's compliance with this Consent Decree.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons access for Settling Defendant, as well as for the United States and the State and their representatives, including, but not limited to, its contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access to the owner of any property to which access is required for the implementation of the Consent Decree but does not include payment of reasonable sums of money in consideration of access to Klockner and Klockner, a partnership, Roned Realty Company, and Lusardi's Cleaners, Inc.. If any access required to complete each phase of the Work, as identified in 1) the SMP for Remedial Design, and 2) the SMP for Remedial Action, is not obtained within 60 days of the date of EPA's approval of 1) the Well Installation Plan pursuant to Section D.2.b. of the SOW, or 2) the SMP for Remedial Action, respectively, or within 60 days of the date EPA notifies the Settling Defendant in writing that additional access beyond that previously secured is necessary, Settling Defendant shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access.

Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of non-privileged sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month with respect to the Site and/or all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month with respect to the implementation of this Consent Decree or obtained in the course of the implementation of this Consent Decree; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data

collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the State by the fourteenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 47.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

31. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant

to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II, at (908) 548-8730. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of such an event as described in Paragraph 32, Settling Defendant shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendant shall submit all plans, reports, and data required by Section VI (Performance Of The Work By Settling Defendant), above, the SOW, the EPA-approved Remedial Design Work Plan, the EPA-approved Site Management Plan for Remedial Action, or any other approved plans to EPA in accordance with the schedules set forth in Section VI (Performance Of The Work By Settling Defendant), above, and such approved plans. Settling

Defendant shall simultaneously submit copies of all such plans, reports and data to the State, in accordance with the requirements of Section XXVII (Notices and Submissions), below.

35. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above; which purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the

event that EPA modifies the initial submittal of a given plan, report or other item (as opposed to a resubmittal of a given item) to cure the deficiencies pursuant to Paragraph 36(c) and that initial submittal has a material defect, EPA retains its right to seek stipulated penalties, for that deficient submittal, pursuant to Section XXI (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendant may, within 7 days or such other time as specified by EPA in such written notice, request in writing to meet with EPA in order to discuss correcting the deficiencies and resubmitting the plan, report, or other item for approval. If such a request is made and a meeting is held, then within 7 days of the meeting, the Settling Defendant shall correct the deficiencies and resubmit the plan, report, or other item. If no meeting is requested, or such a request is denied by EPA, then the Settling Defendant shall correct the deficiencies and resubmit the plan, report, or other item within 14 days for EPA to approve. Any stipulated penalties applicable to the submission pursuant to Section XXI (Stipulated Penalties) shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified as provided in Paragraph 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of

any non-deficient portion of a submission shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Settling Defendant shall implement any such plan, report, or item as amended or developed by EPA, subject only to its right to invoke the procedures set forth in Section XX (Dispute Resolution).

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Defendant does not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XX, stipulated penalties shall accrue for such violation pursuant to

Section XXI (Stipulated Penalties) from the date on which the initial submission was originally required.

41. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

42. a. Within fifteen (15) days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of its respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for the Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a

Site representative for oversight of performance of daily operations during remedial activities.

b. Notice by EPA to the Project Coordinator will be deemed notice to the Settling Defendant for all matters relating to the Work under this Consent Decree.

43. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the NCP, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. Settling Defendant's Project Coordinator shall be available to meet with EPA at EPA's request.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Defendant shall establish and maintain financial security in the

amount of \$8,000,000 in one of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Settling Defendant; or
- (e) A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. Part 264.143(f).

46. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of

receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

47. Completion of the Work

a. Within sixty (60) days after Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XVI. EMERGENCY RESPONSE

48. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 49, immediately take all appropriate action to prevent,

abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the Response and Prevention Branch of the Emergency and Remedial Response Division, Region II, at (908) 548-8730. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

49. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

50. Within 30 days of the effective date of this Consent Decree, Settling Defendant shall:

a. Pay to the United States \$800,000 in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the CERCLA Number 02-81 and the U.S.A.O. File Number_____. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendant upon execution of the Consent Decree. Any EFTs received at the U.S. Department of Justice lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

51. Settling Defendant shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will periodically send Settling Defendant billings for such costs. Those billings will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. Settling Defendant shall make all payments within 30 days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 52 below. The Settling Defendant shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number 02-81 and DOJ case

Number 90-11-3-923. The Settling Defendant shall forward the certified check(s) to:

EPA - Region 2
Attention: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

52. Settling Defendant may contest payment of any Future Response Costs under Paragraph 51 if it determines that the United States has made a mathematical error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 51. Simultaneously, the Settling Defendant shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested

Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendant shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 51. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs for which it did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 51; any balance of the escrow account shall be disbursed to Settling Defendant. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

53. In the event that the payments required by Paragraph 50 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 51 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendant's receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

54. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of

Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

55. Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant

shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

56. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Work pursuant to Paragraph 47.b. of Section XV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of \$8,000,000 dollars, combined single limit naming as additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to

that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

57. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant or of any entity controlled by Settling Defendant, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her

absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New Jersey Superfund Branch, Emergency and Remedial Response Division, EPA Region II, as soon as possible but not later than within 5 days of when Settling Defendant first knew or should have known that the event might cause a delay. Within 10 days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance of which its contractors or subcontractors had or should have had notice.

59. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

60. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than 20 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 57 and 58, above.

If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

62. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties to the dispute. The dispute shall be considered to have arisen when one party sends the other party a written Notice of Dispute.

63. a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal

negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under paragraph 64 or 65.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position will include a statement as to whether formal dispute resolution should proceed under Paragraph 64 or 65.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 64 or 65, the Parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 64 and 65.

64. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; (2) the adequacy of the response actions performed pursuant to this Consent Decree; and (3) the adequacy of the manner in which such response actions were performed. Nothing in this Consent Decree shall be construed to allow any dispute by the Settling Defendant regarding the ROD.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph and Paragraph 65. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties to the dispute.

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 64.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 64.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 64.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 64.a.

65. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Contemporaneously with or following the submission of EPA's Statement of Position pursuant to Paragraph 63.b., the ERRD Director, EPA Region II, will issue a final decision resolving

the dispute. The ERRD Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves on the Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

b. Notwithstanding Paragraph P of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

66. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree not directly in dispute, unless EPA agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 73. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

67. Settling Defendant shall be liable for stipulated penalties in the amounts set forth below to the United States for failure to comply with any requirements of this Consent Decree, unless excused under Section XIX (Force Majeure). "Compliance" by the Settling Defendant shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
<u>Per Day</u>	
\$1,000	1st through 7th day
\$2,500	8th through 14th day
\$5,000	15th through 29th day
\$7,500	30th day through 44th day
\$10,500	45th day through 59th day
\$15,000	60th day and beyond

68. In the event that EPA assumes performance of all the remaining Work pursuant to Paragraph 79 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendant shall be liable for a stipulated penalty in the amount of \$5,000,000.

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

70. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendant written notification and a description of such noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

71. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

EPA-Region II
Attention: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

and shall reference CERCLA Number 02-81 and DOJ Case Number 90-11-3-923. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

72. The payment of penalties shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

73. Penalties shall continue to accrue as provided in Paragraph 69 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole, Settling Defendant shall pay all accrued penalties owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below. If the dispute is appealed to the Court and the United States prevails only in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owing to the United States, within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below.

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties owing

to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as it continues to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

74. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 71 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

75. No payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

76. Covenant I: Covenant Not to Sue by Plaintiff for Operable Unit Work Performed under Consent Decree. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided here in this Paragraph and Paragraphs 77 and 78 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of the Work and for recovery of Past Response Costs and Future Response Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraphs 50 and 51 of Section XVII (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not extend to any other person. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to future liability for any future operable units and for reimbursement of costs of any future operable units relating to:

- 1) the Klockner Plume; or
- 2) any areas or media that are potential sources of contamination of the Klockner Plume and that are located on the Klockner Property or are located off the Klockner

Property but to which hazardous substances migrating from the Klockner Property have come to be located.

77. Covenant II: Covenant Not to Sue by Plaintiff and Additional Reservations Regarding Remedial Actions Relating to any Portion of the Site, Other than 1) the Klockner Plume or 2) Any Areas or Media That Are Potential Sources of Contamination of the Klockner Plume and That Are Located On the Klockner Property or Are Located Off the Klockner Property but to which Hazardous Substances Migrating From the Klockner Property Have Come to be Located. Except as provided below in this Paragraph and Paragraph 78, the United States covenants not to sue or to take administrative action against the Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA for performance of response actions and reimbursement of costs of any response actions, except those response actions and response costs for which Settling Defendant is otherwise obligated pursuant to this Consent Decree, relating to any portion of the Site, other than:

- 1) the Klockner Plume; or
- 2) any areas or media that are potential sources of contamination of the Klockner Plume and that are located on the Klockner Property or are located off the Klockner Property but to which hazardous substances migrating from the Klockner Property have come to be located.

These covenants not to sue shall take effect upon receipt by EPA of the payments required by Paragraphs 50 and 51 of Section XVII

(Reimbursement of Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, the performance of the Remedial Design. The United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant:

(A) to perform response actions, except those response actions for which Settling Defendant is otherwise obligated pursuant to this Consent Decree, relating to any portion of the Site, other than:

- 1) the Klockner Plume; or
- 2) any areas or media that are potential sources of contamination of the Klockner Plume and that are located on the Klockner Property or are located off the Klockner Property but to which hazardous substances migrating from the Klockner Property have come to be located; or

(B) to reimburse the United States for costs of any response actions, except those response actions for which Settling Defendant is otherwise obligated pursuant to this Consent Decree, relating to any portion of the Site, other than:

- 1) the Klockner Plume; or
- 2) any areas or media that are potential sources of contamination of the Klockner Plume and that are located on the Klockner Property or are located off the Klockner

Property but to which hazardous substances migrating from the Klockner Property have come to be located, if information, previously unknown to EPA, is received in whole or in part, and the previously unknown information together with any other relevant information indicates that Settling Defendant may be liable under CERCLA for any response actions and reimbursement of costs for any response actions relating to any portion of the Site, other than:

- 1) the Klockner Plume; or
- 2) any areas or media that are potential sources of contamination of the Klockner Plume and that are located on the Klockner Property or are located off the Klockner Property but to which hazardous substances migrating from the Klockner Property have come to be located.

These covenants not to sue in this Paragraph 77 are null and void, if Settling Defendant has made material misrepresentations in the certifications made pursuant to Section XXV, Paragraph 91, and Section XXVI, Paragraph 94.

78. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraphs 76 and 77. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) unless otherwise barred by the covenant not to sue in Paragraph 77, liability arising from the past disposal, release, or threat of release of Waste Materials outside of the Klockner Plume but within the Site;

(4) liability arising from the present or future disposal, release, or threat of release of Waste Materials outside of the Klockner Plume but within the Site;

(5) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss;

(6) liability for response costs that have been or may be incurred by the United States Fish & Wildlife Service of the United States Department of Interior and the National Oceanic & Atmospheric Administration of the United States Department of Commerce;

(7) criminal liability; and

(8) liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

79. In the event EPA determines that Settling Defendant has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant may invoke the

procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendant failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVII (Reimbursement of Response Costs).

80. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANT

81. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States, under CERCLA based on liability arising under Section 107 related to the Site, or any claims arising out of response activities at the Site. However, Settling Defendant and the United States agree

that Settling Defendant reserves a right to bring: 1) a CERCLA action based on liability arising under Section 107; 2) a contractual indemnity claim; or 3) both of the above, with respect to the Site or this Consent Decree against the United States Navy, the United States Air Force, the United States Army and the National Aeronautics Space Administration. The United States does not acknowledge the validity of any such claims, and reserves any and all rights and defenses with respect to such claims, including jurisdictional defenses. Furthermore, the Settling Defendant reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendant's plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

82. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law.

Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

83. It is the policy of the United States to identify potentially responsible parties who do not participate in CERCLA settlements and, subject to its non-reviewable prosecutorial discretion, to seek reimbursement of response costs not recovered by settlement, and/or to take other appropriate action against such non-settling parties pursuant to the provisions of CERCLA.

84. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendant is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

85. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. However, the Settling Defendant agrees that with respect to any counterclaim for contribution filed by Settling Defendant in response to any suit or claim for contribution brought against Settling Defendant for matters related to this Consent Decree, Settling Defendant will notify the United States

in writing no later than 10 days prior to the filing of such counterclaim.

86. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree it will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

87. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

88. Settling Defendant shall provide to EPA, upon request, copies of all non-privileged documents and information within its

possession or control or that of its contractors or agents relating to activities at the Site and/or all documents and information within its possession or control or that of its contractors or agents relating to the implementation of this Consent Decree or information obtained during the course of the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

89. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

b. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege in lieu of providing documents, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

90. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all non-privileged sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other non-privileged documents or information evidencing conditions at or around the Site. In addition, no claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information obtained during the course of implementation of the Work evidencing conditions at or around the Site.

91. Settling Defendant certifies, for the purposes of this Consent Decree and to the best of its knowledge, that it has provided to EPA all non-privileged records, documents and information currently in its possession or in the possession of its officers, directors, employees, contractors, agents or assigns, which relate to Settling Defendant's generation, treatment, transportation, storage, or disposal of hazardous substances at or in connection with the Site. If Settling Defendant asserts that certain records, documents and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law in lieu of providing the documents, it shall provide the Plaintiff with the information set forth in Paragraph 89 b. above. Settling Defendant further certifies that no privileged information in its possession or control is contrary to any information previously supplied.

XXVI. RETENTION OF RECORDS

92. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 47.b of Section XV (Certification of Completion of the Work), Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention

policy to the contrary. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 47.b of Section XV (Certification of Completion), Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

93. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver any such records or documents to EPA. The Settling Defendant may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, it shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendant. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

94. Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §9604(e), 9622(e) and Section 3007 of RCRA, 42 U.S.C. §6927.

XXVII. NOTICES AND SUBMISSIONS

95. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or its successors give notice of a change to the other party in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendant, respectively.

A. As to the United States or EPA:

Chief, Environmental Enforcement Section
 Environment and Natural Resources Division
 U.S. Department of Justice
 P.O. Box 7611
 Ben Franklin Station
 Washington, D.C. 20044
 Re: DJ # 90-11-3-923

and

Director, Emergency and Remedial Response Division
 United States Environmental Protection Agency
 Region II
 26 Federal Plaza, Room 711
 New York, New York 10278

Attention: Rockaway Borough Well Field Superfund Site Remedial
 Project Manager

and

Chief, New Jersey Superfund Branch
 Office of Regional Counsel
 United States Environmental Protection Agency
 Region II
 26 Federal Plaza, Rm. 309
 New York, New York 10278
 Attn: Rockaway Borough Well Field Superfund Site Attorney

B. As to the State:

NJDEPE Division of Publicly Funded
 Site Remediation
 401 East State Street
 Trenton, N.J. 08625
 Attention: Rockaway Borough Well Field Superfund Site State
 Project Coordinator

C. As to the Settling Defendant:

[Name]
 Settling Defendant's Project Coordinator
 [Address]

XXVIII. EFFECTIVE DATE

96. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXIX. RETENTION OF JURISDICTION

97. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XX (Dispute Resolution) hereof.

XXX. APPENDICES

98. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is a map of the Site.

XXXI. COMMUNITY RELATIONS

99. Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

100. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Defendant. All such modifications shall be made in writing.

101. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

102. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

103. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

104. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

105. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

106. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

107. The Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 26th DAY OF October, 1994.

/s/ Hon. Harold A. Ackerman
United States District Judge

NOV 04 1994
RECEIVED

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Thiokol Corporation, relating to the Rockaway Borough Wellfield Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 12/23/93

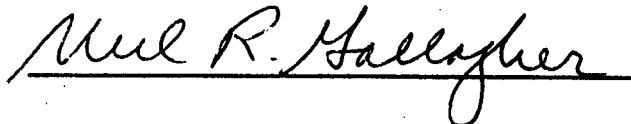
Lois J. Schiffer

Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530



Anna Swerdel

Anna Swerdel, Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
Post Office Box 7611, Ben Franklin Station
U.S. Department of Justice
Washington, D.C. 20044
(202) 514-3659



Neil R. Gallagher

Assistant United States District Attorney
United States District of New Jersey
970 Broad Street, Room 502
Newark, New Jersey 07102


Will. Muszynski 9/30/83
William J. Muszynski
Acting Regional Administrator, Region II
U.S. Environmental Protection
Agency
26 Federal Plaza
New York, NY 10278

Bruce H. Aber 9/29/83
Bruce H. Aber
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region II
26 Federal Plaza
New York, NY 10278

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Thiokol Corporation, relating to the Rockaway Borough Wellfield Superfund Site.

FOR THIOKOL CORPORATION

Date: August 2, 1993



Name: James R. Wilson
Title: Executive V.P. & Chief Financial Officer
Address: 2475 Washington Blvd.
Ogden, UT 84401-2398

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: C. T. Corporation
Title:
Address: 1600 Broadway
Denver, CO 80202

Tel. Number: (303) 839-1705